

CHESAPEAKE BAY TMDL STAKEHOLDER ADVISORY GROUP MEETING SUMMARY

February 26, 2010

1:00 p.m. – 4:00 p.m.

East Reading Room, Patrick Henry Building
1111 East Broad Street, Richmond, VA 23219

List of SAG members who attended the meeting is shown in Appendix 1.

The Secretary of Natural Resources Douglas Domenech welcomed participants to the meeting.

Secretary Domenech expressed strong administration support for meeting the Chesapeake Bay water quality goals. He noted that the Commonwealth has worked in good faith with EPA and has made good progress in meeting phosphorous and nitrogen targets. This was achieved through partnerships with agriculture and industry. He also spoke of his concern that the previous spirit of leadership by EPA is being replaced by regulation and enforcement in ways that are hurting the sense of partnership and cooperation.

Frank Dukes of the Institute for Environmental Negotiation, University of Virginia, facilitated the meeting. His role is to ensure best use of members' time by developing and following a clear agenda and ensuring full participation by all members of the SAG. He emphasized the role of SAG members to offer their needs, concerns and ideas to promote defensible solutions that protect Virginians' economic livelihoods and that meet these criteria:

- Equitable;
- Capable of achieving desired goals;
- Cost-effective.

The agenda for this meeting attempted to provide a balance between offering information and capturing people's views and opinions. The agencies' intent is to listen and understand SAG member needs and concerns and to incorporate ideas to the extent possible.

Timeline and Watershed Implementation Plans (WIP)

Russ Perkinson of the Department of Conservation and Recreation (DCR) and Alan Pollock of the Department of Environmental Quality (DEQ) were introduced as the lead personnel in developing the Virginia Implementation Plan for the Chesapeake Bay TMDL, also known as the Watershed Improvement Plan (WIP). Mr. Perkinson reviewed the process and timeline of EPA's expectations. EPA expects a preliminary draft of Virginia's plan by June 1. After getting EPA's comments, a final draft will be issued in August for public review. Virginia expects to have two SAG meetings prior to the June 1 deadline. A member suggested that they would want to have the opportunity to meet after Virginia gets EPA's comments and before issuance of the August draft, and the agency leads agreed.

Key discussion about the timing and WIP included the following questions, comments and responses:

- EPA does not expect to have the Bay TMDL issued until the end of 2010. The driver for this timing is the consent decree for meeting water quality standards. This presents a challenge in simultaneously developing Virginia's Implementation Plan without having fixed waste load allocations.
- The model used to develop these allocations is expected to generate revised figures in March, and Virginia's representatives will be attending an April 5/6 meeting of the Water Quality Goal Implementation Team at which EPA will present options for the state and basin allocations. A late April meeting of the Principals' Staff Committee is expected to develop agreement on those state/basin allocations. These figures are expected to be close enough to the final figures that they will provide sufficient guidance to accomplish this task.
- The final target date is set for 2025, with a 2017 interim goal of 60% of those allocations. These allocations will be divided into these categories: wastewater, agriculture, urban/suburban runoff (stormwater), on-site systems, and forestry.
- EPA will be providing contractor support for technical and facilitation services. They also have promised up to nine runs of the model; each run allows Virginia to test the impact of different load reductions by sector.
- A new term, 'segment-shed', is being used with the Bay TMDL. A 'segment-shed' is a land area that drains into an individual tidal water segment listed as impaired. In Virginia, there are 40 segment-sheds; the entire Bay watershed includes 92 segment-sheds. A TMDL is needed for each body of water listed as impaired and for each pollutant (phosphorous, nitrogen and sediment) that contributes to the impairment. Therefore, in Virginia, three TMDLs will be needed for each 4 segment shed.

Virginia's Watershed Implementation Plan must meet the 'reasonable assurance' test that the reduction goals can actually be met. There was question and discussion about the ambiguity of reasonable assurance and what this actually means. This has always been a part of EPA guidance, but EPA hasn't defined exactly how much assurance is required. There is no specific citation in the Clean Water Act.

Another question concerned whether Virginia will be seeking input from localities and Soil and Water Conservations Districts. The SAG is one way to get broad exposure and input, and staff would also like to meet with these smaller entities directly. There isn't time in Phase 1 to do this now; however, Phase 2 is scheduled to occur from January-November 2011, and that is when target loads will be divided among watersheds, counties and sources.

The target loads for the James River basin that were set to address dissolved oxygen impairments are under review by EPA to determine if they need to be lowered to also address the chlorophyll *a* in the tidal river.

There were questions and concerns expressed about using the standard of 'Everything, Everywhere by Everyone' (E3) as an imaginary baseline. The concern is that highlighting an

unrealistic set of figures may result in those figures becoming an expected standard. This could end up being framed such that success in reaching the target still isn't good enough; therefore it is better simply to talk about the TMDL levels. The counter-argument is that seeing those figures helps to put the TMDL levels in perspective and shows in another way how much work needs to be done to meet the water quality goals.

It was noted that Virginia is in relatively better position than most other jurisdictions concerning additional needed nutrient reductions. For instance, based on the draft target loads and methodology to used to set state and basin allocations to date, Pennsylvania will have to do twice the Nitrogen and ten times the Phosphorous reductions to meet their goals relative to Virginia.

Proposed Approach for Source Sector Allocation

Mr. Perkinson and Mr. Pollock presented a power point summary of the agencies' proposed approach for Source Sector Allocations. They emphasized that this was an effort to get something to the SAG for their review, and that these ideas were subject to the SAG and the agencies' review. Also, the agencies do not have knowledge yet as to how far the actions listed in the sheets get us toward meeting Virginia's draft target loads, so additional modifications are likely needed. Key questions and discussions follow:

- One SAG member expressed appreciation for the work of local governments and wastewater treatment facilities reducing nitrogen and phosphorous from wastewater treatment facilities over the past five years or so. This has been done through a partnership effort and by coming together to address the funding needs through legislative appropriations. However, given the challenges of achieving non-point reductions from other sectors with reasonable assurance, it wouldn't be appropriate to take off the table the possibility of additional reductions from wastewater facilities.
- There were questions about what role was played by the groups of subject matter experts in determining these draft figures and the future role of the SAG relative to these experts. A similar concern was expressed about EPA's Bay model: the lack of transparency in both cases means that there is a lack of ground-truthing in the process. The Department of Conservation and Recreation responded that the agency wanted to get independent technical expertise. These unpaid technical experts included from members from Virginia Tech, the Natural Resources Conservation Service, a retired extension agent, and some of their own DCR people. They were not being identified since they weren't paid and shouldn't be put in the limelight as a result. Some SAG members questioned that role. [NOTE: List of subject matter experts are shown in Appendix 2.]
- While the EPA doesn't require a cost analysis, Virginia has an interest in making any changes as cost effective as possible. EPA's Bay model does not consider costs, however. That's where the Implementation Plan and advice from the SAG comes in. In relation to costs, it was noted that there is a large wetlands provision in the Tributaries' Strategy that might not be feasible; that will need to be examined with a critical eye.
- SAG members raised concerns about allowing for development growth, which needs to be accounted for in the plan. One argument was that planning for such growth will mean

increasing load allocations; another argument was that since wastewater treatment facilities were given a cap and were able to adapt, development growth could likewise be accommodated within planned limits. A counter to that argument was that there should not be a cap on wastewater treatment facilities, either. There are cases where you can't add any additional capacity under the caps, so the only other alternative would be on-site treatment. One suggestion was that the agriculture community could provide some of the offsets required to allow for capacity enhancements. The agency thinking at this time is that what has been done already has been a major effort, and Virginia will need to look to other sectors. If there isn't enough that can be done in those other sectors, they will then have to reassess.

- It was noted that in cases where local requirements are more stringent than that of the Bay TMDL, it could be possible to use those to offset reductions in other areas in the same segment or river basin.
- Several people claimed that there are instances of underreported conservation practices currently in place; for example, one person stated that 65% of farmland in grain production is produced using no-till, and the draft 2017 goal only seeks 25% for continuous no-till. There was discussion that there may be different definitions of what meets an appropriate qualification; 'continuous no-till' means that practice has been in place for at least five years, so just because a farmer is practicing no-till doesn't mean that it meets the qualification. Only qualified BMPs are included and reported to the EPA.
- Some BMPs can't be at 100%; for instance, if cover crops were at 100% then there would be no small grain (wheat, barley and rye) production for harvest. 22% is actually a high standard since it is measured against total cropland. And there was concern that it is redundant to have a grass buffer around pasture and fencing of streams as separate items.
- Another data challenge concerned the management of poultry operations. Most operations already have animal mortality composters, and who would pay the cost of transport of 125,000 tons of poultry litter?
- Another concern was the amount of land allocated to each commodity type: what happens if land is repurposed within agricultural sectors? The response was that Virginia will need to meet the load targets and can adjust within the two-year milestone period in order to practice adaptive management to address these concerns.
- There is continuing concern that data tracking is not adequate. Another example was the listing of only two septic systems connected in 2008, which is an inaccuracy due to the lack of tracking. 2017 numbers are based on what the agencies think is going on today, and are conservative. There is a bill pending in the General Assembly to create a voluntary tracking program. In the absence of such data collection, the agencies are looking to the SAG to give them this sort of feedback about what is correct and what is incorrect.
- One member asked if we are going to tackle air pollution in Virginia's plan or do we leave that to EPA? Most air emissions originate outside of Virginia, and EPA will handle that source sector under the Clean Air Act. EPA will present more on the air component at the Principal's Steering Committee meeting at the end of April.

Next Steps and Followup

SAG members had several suggestions:

- Some people again expressed their concern that the agencies preparing the TMDL were being advised by another group that was anonymous. Others supported that view and indicated that they would like the experts in this room and the people who would be affected to be the ones developing the plans. Secretary Domenech said that is exactly what this advisory process is intended to do. [Refer to Appendix 2]
- Secretary Domenech also urged SAG members to offer feedback about this draft sector allocation approach. Written feedback about any part of this process would be most useful by March 10, in order to have it when the states can start asking for model runs. The agencies will still read them after that, but sooner could be more immediately useful. Comments will be shared with the whole group. Send comments to: alan.pollock@deq.virginia.gov.
- If there's another draft of the straw man, it should come before the large meeting itself so that people can really look into it and make more substantive comments. Also, give attribution for where the numbers are coming from, as was previously said. If you say where they come from, you at least have a starting point for discussion.
- The draft plan should include funding, legal, and information gaps identified today.
- We need to incorporate items such as growing oysters and clams in the plan.
- There is interest in exploring the question of nutrient trading based on potential legislation at state and federal levels.

The date for the next meeting will be determined within the next week or two.

APPENDIX 1

Chesapeake Bay TMDL Advisory Group
[Members Attending February 26, 2010 Meeting]

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APPENDIX 2

To better inform DCR in the development of initial draft Enhanced Program Implementation Level (EPIL) projections for agriculture, DCR consulted with the following group of subject matter experts. Following this input, DCR made the decisions concerning the level of BMP coverage in the draft EPIL projections.

Ken Carter - Retired NRCS State Resource Conservationist
David Faulkner - NRCS State Agricultural Economist
Sam Johnson - Retired Extension Agent
Gary Moore - DCR Cost-Share Program Manager
Dr. Jim Pease - Virginia Tech Agricultural Economist
Tim Sexton - DCR Nutrient Management Program Manager
Dr. Gene Yagow - Virginia Tech Agricultural Engineer
Neil Zahradka - DEQ Manager of Office of Land Application